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CUMULATIVE SUPPLEMENT
TO
MISSISSIPPI CODE
1972 ANNOTATED

Issued September, 2012

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ENACTED THROUGH THE 2012 REGULAR SESSION**

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2012 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2012 Regular Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

- Southern Reporter, 3rd Series
- United States Supreme Court Reports
- Supreme Court Reporter
- United States Supreme Court Reports, Lawyers' Edition, 2nd Series
- Federal Reporter, 3rd Series
- Federal Supplement, 2nd Series
- Federal Rules Decisions
- Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

- American Law Reports, 6th Series
- American Law Reports, Federal Series
- Mississippi College Law Review
- Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

PUBLISHER'S FOREWORD

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2012 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2012

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SCHEDULE OF NEW SECTIONS

Added in this Supplement

TITLE 87. CONTRACTS AND CONTRACTUAL RELATIONS

CHAPTER 7. Improvements to Real Property

SEC. 87-7-7.	Contractor negotiation of draft payable to contractor and other parties; written signed authorization of co-payees required; penalties.
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MISSISSIPPI CODE
1972

ANNOTATED

VOLUME NINETEEN B

TITLE 85

DEBTOR-CREDITOR RELATIONSHIP

Chapter 7. Liens 85-7-1

CHAPTER 3

Exempt Property

§ 85-3-1. Property exempt from seizure under execution or attachment.

JUDICIAL DECISIONS

2. Exempt personal property generally.

In the event that the term “motor vehicles” was not clear and unambiguous so that the court should employ the canons of statutory construction to interpret the meaning of “motor vehicles” in Miss. Code Ann. § 85-3-1(a), the court found as follows: (1) in other Mississippi statutes, the ordinary use of “motor vehicles” included motorcycles, (2) the Mississippi Legislature used the term “motor vehicles” in § 85-3-1(a) without adding language to include some types of motor vehicles but not others, (3) the sections of the Mississippi Code that discussed motorcycles demonstrated that for the purposes of traffic regulation, conveyance, registration, and taxation, the Mississippi Legislature considered motorcycles to be a type of motor vehicles. Without indication to the contrary, there was no reason to pre-

sume that the Mississippi Legislature had any different intent with respect to its treatment of motorcycles under the Exemption Statute. In re Clemons, 441 B.R. 519 (Bankr. N.D. Miss. 2010).

Term “motor vehicles” is clear and unambiguous and should be given its plain meaning; furthermore, (i) the plain meaning of “motor vehicles” includes motorcycles, (ii) if the Mississippi Legislature had desired to narrow the types of “motor vehicles” affected by the Exemption Statute, Miss. Code Ann. § 85-3-1, it certainly knew how to add restricting language to accomplish that goal, and (iii) accordingly, motorcycles fall within the category “motor vehicles” and as such are a type of tangible personal property included in § 85-3-1. A debtor may, therefore, claim a motorcycle as exempt property pursuant to § 85-3-1. In re Clemons, 441 B.R. 519 (Bankr. N.D. Miss. 2010).

RESEARCH REFERENCES

ALR. Construction and Application of Exemption for Firearms under State Law. 46 A.L.R.6th 401.

§ 85-3-21. Homestead exemption; land and buildings.

JUDICIAL DECISIONS

- 6. Rights of survivors.
- 16. Waiver.

6. Rights of survivors.

Trial court did not err in granting an executrix summary judgment and in determining that the claim of the Mississippi Division of Medicaid was not valid against a decedent's property because the decedent predeceased his children and a grandchild to whom he devised all of his property, and pursuant to the unambiguous language of Miss. Code Ann. §§ 85-3-21, 91-1-19, and 91-1-21, coupled with case law, the homestead, with its exemption, passed from the decedent to his children and grandchildren free of his debts; thus, Medicaid was not entitled to pursue a claim against the exempted property as it was not a part of the estate. *State v. Stinson (In re Estate of Darby)*, 68 So. 3d 702 (Miss. Ct. App. 2011), writ of certiorari denied by 69 So. 3d 767, 2011 Miss. LEXIS 419 (Miss. 2011).

16. Waiver.

Executrix did not waive the homestead exemption by entering into a contractual relationship with the Mississippi Division of Medicaid on behalf of a decedent because the record did not support the idea that the decedent had any knowledge of the benefits a homestead exemption provided, nor that he intentionally waived his right to the benefit of that exemption since the contract did not provide any information pertaining to, or even mention, the significance of any exemption; there was no evidence of the decedent's intent to waive any of his rights because by entering into the contract, the decedent merely acknowledged Medicaid as a creditor of his estate, which estate had no property against which Medicaid could recover. *State v. Stinson (In re Estate of Darby)*, 68 So. 3d 702 (Miss. Ct. App. 2011), writ of certiorari denied by 69 So. 3d 767, 2011 Miss. LEXIS 419 (Miss. 2011).

CHAPTER 5

Joint and Several Debtors

§ 85-5-7. Limitation of joint and several liability for damages caused by two or more persons; contribution between joint tortfeasors; determination of percentage of fault; liability of medical defendants for economic and noneconomic damages.

JUDICIAL DECISIONS

I. Under § 85-5-7.

5. Joint and several damages.
6. Miscellaneous.

I. Under § 85-5-7.

5. Joint and several damages.

Under Mississippi's Dram Shop Act, Miss. Code Ann. § 67-3-73(4) (2005), which required proof that a customer was served alcohol when he was visibly intoxicated, a casino was liable for damages from the customer's car accident as the expert of the wrongful-death heirs testified that the driver's blood alcohol content was high enough that trained personnel should have spotted the driver's intoxication. However, under Miss. Code Ann. § 85-5-7(3), which was in effect when the suit was filed, joint and several liability was limited to fifty percent of recoverable damages. *Robinson Prop. Group, Ltd. P'ship v. McCalman*, 51 So. 3d 946 (Miss. 2011).

In light of *Fontenot* and Miss. Code Ann. § 85-5-7(5), Mississippi law supports allocation of fault to immune parties, such as an employer in a non-vessel

the Longshore and Harbor Workers' Compensation Act, 33 U.S.C.S. § 901 et seq., claim. *Jowers v. Lincoln Elec. Co.*, 617 F.3d 346 (5th Cir. 2010).

6. Miscellaneous.

Grant of summary judgment in favor of the other driver in the passenger's negligence action for injuries that she received in a car accident was inappropriate because an oral surgeon's testimony was admissible; he testified that his opinion was based on his knowledge, skill, experience, training, and education as an orthopedic surgeon and his testimony was sufficient to establish the element of proximate cause and was admissible for the jury to consider in the apportionment of damages. The other driver, as the driver of the second car to hit the vehicle in which the passenger was riding, was responsible only for the amount of the passenger's damages that were based on his fault allocated by the jury in accord with Miss. Code Ann. § 85-5-7. *Lopez v. McClellan*, — So. 3d —, 2010 Miss. App. LEXIS 214 (Miss. Ct. App. Apr. 27, 2010), appeal dismissed by 2010 Miss. App. LEXIS 480 (Miss. Ct. App. Sept. 7, 2010).

CHAPTER 7

Liens

Lien on Amount Due Contractor 85-7-187

LIEN ON AMOUNT DUE CONTRACTOR

SEC.

85-7-185. Bond; provisions; right to intervene in action on bond.

§ 85-7-185. Bond; provisions; right to intervene in action on bond.

When any contractor or subcontractor entering into a formal contract with any person, firm or corporation, for the construction of any building or work or the doing of any repairs, shall enter into a bond with such person, firm or corporation guaranteeing the faithful performance of such contract and containing such provisions and penalties as the parties thereto may insert therein, such bond shall also be subject to the additional obligations that such contractor or subcontractor shall promptly make payments to all persons furnishing labor or material or rental or lease equipment under said contract; and in the event such bond does not contain any such provisions for the payment of the claims of persons furnishing labor or material or rental or lease equipment under said contract, such bond shall nevertheless inure to the benefit of such person furnishing labor or material under said contract, the same as if such stipulation had been incorporated in said bond, and any such person who has furnished labor or materials or rental or lease equipment used therein for which payment has not been made shall have the right to intervene and be made a party to any action instituted on such bond, and to have his rights adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the rights or claim for damages or otherwise, of the obligee. The bond herein provided for may be made by any surety company authorized to do business in the State of Mississippi. A subcontractor supplying labor or materials for the prosecution of work shall, upon request to the owner or contractor, be furnished with a true and correct copy of the bond.

SOURCES: Codes, Hemingway's 1921 Supp. § 2434b; 1930, § 2276; 1942, § 374; Laws, 1918, ch. 128; Laws, 2010, ch. 372, § 4; Laws, 2012, ch. 357, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment added the last sentence.

TITLE 87

CONTRACTS AND CONTRACTUAL RELATIONS

Chapter 7.	Improvements to Real Property	87-7-1
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CHAPTER 7

Improvements to Real Property

SEC.	
87-7-7.	Contractor negotiation of draft payable to contractor and other parties; written signed authorization of co-payees required; penalties.

§ 87-7-7. Contractor negotiation of draft payable to contractor and other parties; written signed authorization of co-payees required; penalties.

(1) A contractor who undertakes to negotiate a draft made payable to the contractor and any other party must first obtain an endorsement or other written signed authorization of every co-payee on the draft if the draft is tendered in payment for materials or equipment furnished or labor performed by the owner, laborer, supplier or equipment dealer.

(2) A contractor who negotiates a draft without first obtaining an endorsement or other written signed authorization required under this section is guilty of a misdemeanor and shall be subject to a fine not to exceed Five Hundred Dollars (\$500.00) per violation, and shall also be ordered by the court to make full restitution to the owner, laborer, supplier or equipment dealer who is entitled to payment from the proceeds of the draft, as well as reasonable attorney's fees incurred by any party to whom restitution is ordered.

SOURCES: Laws, 2012, ch. 506, § 1, eff from and after July 1, 2012.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

Index

C

CONSTRUCTION CONTRACTS.

Contractor and subcontractor payments.

Multiple co-payees, endorsements or
authorizations required, §87-7-7.

